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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VAL JEAN BUREAU, et al.,)	NO. SACV 14-304-JGB (MAN)
)	
Plaintiffs,)	ORDER DISMISSING ACTION
)	
v.)	
)	
THE CITY OF DANA POINT, et al.,)	
)	
Defendants.)	
)	

On February 28, 2014, plaintiffs Val Jean Bureau and Marianne Stahl filed a civil rights complaint, which names the City of Dana Point and 19 individuals as defendants ("Complaint"). Although the nature of the claim(s) plaintiffs alleges is unclear, plaintiffs appear to: complain about a receivership action brought by defendant City of Dana Point against plaintiff Stahl in the Orange County Superior Court (the "State Case"); contend that the state court's actions in that case have exceeded its jurisdiction; and contend that February 29, 2012 actions taken by Dana Point code enforcement and building department personnel at plaintiff Stahl's home, including the arrest of Stahl, constituted an improper search and seizure in violation of the Fourth Amendment.

1 On March 4, 2014, United States Magistrate Judge Margaret A. Nagle
2 issued an Order ("March 4 Order") which, *inter alia*, reminded plaintiffs
3 that, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure
4 ("Rule 4(m)"), they had 120 days from the filing date of the Complaint
5 in which to effect service of process on defendants. The March 4 Order
6 cautioned plaintiffs that, if service of process was not completed
7 within that 120 days, this action could be dismissed.

8
9 The Rule 4(m) deadline -- June 28, 2014 -- passed without any
10 further action by plaintiffs in this case. On July 1, 2014, plaintiffs
11 filed a "Verified Joint Request To Extend Time For Service Of Summons &
12 Complaint" ("Request"). In the Request, plaintiffs stated that they did
13 not have the summons in this action issued, nor did they make any effort
14 to effect service of process, because they "contemplated substantial
15 amendment" to the Complaint and "needed to wait for matters beyond their
16 control to transpire." Plaintiffs alluded generally to the pending
17 State Case, but they failed to identify any event that would justify 120
18 days of inaction in this case. Moreover, plaintiff Bureau admitted,
19 both in the Complaint and in the Request, that he is not a party to the
20 State Case. He vaguely alluded to having been hospitalized for 30 days
21 since the Complaint was filed, but he failed to explain how this
22 justified plaintiffs' failure to prosecute this case.¹

23
24 On July 14, 2014, Magistrate Judge Nagle issued an Order in
25 response to the Request ("July 14 Order"). The July 14 Order discussed
26

27 ¹ Given the apparent nature of this case, it is unclear why
28 Bureau is a party at all or how he has standing as a plaintiff. The
Complaint does not plead any valid cause of action on *his* behalf against
the defendants.

1 the above-noted matters and events and the standards that govern
2 extending Rule 4(m) deadlines. She concluded that the Request failed to
3 establish the required good cause for extending the Rule 4(m) deadline
4 in this case, based on her findings that: the Request asked for an
5 extension of the Rule 4(m) period not for the purpose of affording
6 plaintiffs an additional chance to serve the defendants with process
7 but, rather, to allow plaintiffs to prepare a motion for injunctive
8 relief, which apparently would be directed to the judge(s) involved in
9 the State Case; such a motion plainly would be frivolous and futile²; and
10 such a motion could not constitute a basis for ordering an extension of
11 the Rule 4(m) period for service of process. Nonetheless, Magistrate
12 Judge Nagle allowed plaintiffs a final chance to establish good cause
13 for extending the Rule 4(m) deadline in this case, ordering that:

14
15 If plaintiffs wish to pursue this action, then **by no later**
16 **than August 4, 2014**, they must file a response to this Order
17 that sets forth a showing of good cause adequately supported
18 by competent evidence.

19
20 **Plaintiffs are cautioned that the failure to timely respond to**
21 **this Order, and to establish the requisite good cause, will**
22 **result in a recommendation that this action be dismissed,**
23 **without prejudice, pursuant to Rule 4(m) and/or Fed. R. Civ.**
24 **P. 41(b).**

25
26
27 ² As Magistrate Judge Nagle observed: no defendant has been
28 served with process, and thus, there is no person or entity over whom
this Court has jurisdiction and, thus, the authority to enjoin; and any
such motion would fail on its merits for a number of reasons, including
based upon the *Younger* doctrine. (July 14 Order at 2 n.2.)

1 (July 14 Order at 3.)

2
3 The deadline established by the July 14 Order has passed, and
4 plaintiffs have neither filed the ordered response nor otherwise
5 communicated with the Court. Thus, it appears that plaintiffs no longer
6 wish to pursue this action.

7
8 Rule 4(m) provides that, if service of the summons and complaint is
9 not made upon a defendant within 120 days of filing the complaint,
10 federal district courts have the authority to *sua sponte* dismiss an
11 action without prejudice, after notice to the plaintiff. If, however,
12 a plaintiff shows good cause for the failure to serve the complaint
13 within that time frame, the Court must extend the time for accomplishing
14 service. Fed. R. Civ. P. 4(m); see also Muhammed v. Department of
15 Treasury, 1998 WL 986245, at *3 (C.D. Cal. Nov. 19, 1998). The burden
16 of establishing good cause is on the plaintiff. *Id.*, at *4. The "good
17 cause" exception to Rule 4(m) applies "only in limited circumstances"
18 and is not satisfied by "inadvertent error or ignorance of the governing
19 rules." Hamilton v. Endell, 981 F.2d 1062, 1065 (9th Cir. 1992).

20
21 By the March 4 Order, plaintiffs were clearly advised of their
22 obligation to effect service of process within the Rule 4(m) deadline
23 and in compliance with Rule 4's requirements. Moreover, by that same
24 Order, plaintiffs were expressly notified that dismissal of this action
25 could occur if they failed to complete service of process within the
26 Rule 4(m) deadline. The subsequent July 14 Order confirmed this advice
27 and, further, explicitly advised plaintiffs that, if they wanted this
28 action to continue, they were required to establish, in their response

1 to the July 14 Order, good cause for their failure to effect service of
2 process within the Rule 4(m) deadline. Despite this repeated advice,
3 plaintiffs have not provided any indication that they intend to move
4 this case forward by either promptly having the defendants served with
5 the Complaint and/or by amending their Complaint and then promptly
6 proceeding with service of process.


7
8 "Pro se litigants must follow the same rules of procedure that
9 govern other litigants." King v. Atiyeh, 814 F.2d 565, 567 (9th Cir.
10 1987); see also Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (*per*
11 *curiam*) (failure of *pro se* litigant to follow procedural rules justified
12 dismissal of civil rights action). Given the explicit and repeated
13 advice provided to plaintiffs, there is no cause, much less good cause,
14 for their failure to prosecute this action by serving, or at least
15 attempting to serve, the defendants with the Complaint.³ See Wei v.
16 State of Hawaii, 763 F.2d 370, 372 (9th Cir. 1985) (*per curiam*) (opining
17 that Rule 4(m)'s 120-day time limit "is intended to force parties and
18 their attorneys to be diligent in prosecuting their causes of action,"
19 and because plaintiff did not contend that he attempted to serve
20 defendants, was confused about the requirements of service, or was
21 prevented from effecting timely service by factors beyond his control,
22 a dismissal for failure to serve process was justified, even though
23 plaintiff's claim therefore became time-barred).

24
25
26 ³ While plaintiffs are proceeding on a *pro se* basis, they are
27 not incarcerated. Moreover, prior cases brought by plaintiffs in this
28 district have been dismissed, pursuant to Rules 41(b) and 4(m) of the
Federal Rules of Civil Procedure, for lack of prosecution and failure to
effect service of process. Accordingly, their inaction in this case is
particularly inexplicable and inexcusable. See Case Nos. SACV 11-00260-
RGK (MAN) and SACV 12-01061-JGB (MAN).

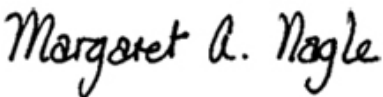
1 Under the circumstances of record, there is no factual or legal
2 basis for extending the expired Rule 4(m) period. Thus, under Rule
3 4(m), dismissal of this action, without prejudice, is warranted.

4
5 Accordingly, IT IS ORDERED that Judgment be entered dismissing this
6 action, without prejudice, for failure to effect service of process in
7 compliance with Rule 4(m) of the Federal Rules of Civil Procedure.

8
9 DATED: August 29, 2014.

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11 
12 _____
JESUS G. BERNAL
UNITED STATES DISTRICT JUDGE

13 PRESENTED BY:

14 
15 _____
MARGARET A. NAGLE
16 UNITED STATES MAGISTRATE JUDGE